No. 16040

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ALBERT S. CRAIG, *et al.*,

Appellants,

vs.

FAR WEST ENGINEERING COMPANY, INC., a corporation,

Appellee.

FAR WEST ENGINEERING COMPANY, INC., a corporation,

Appellant,

vs.

ALBERT S. CRAIG, *et al.*,

Appellees.

OPENING BRIEF OF APPELLANT FAR WEST ENGINEERING COMPANY, Inc.

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Origin of the Appeal.

Plaintiffs Craig, *et al.* (hereinafter called "plaintiffs") brought a series of actions against the defendant Far West Engineering Co., Inc. (hereinafter called "Far West") for the difference between overtime and straight time compensation over certain designated periods of

time. [Tr. pp. 312, and 276-277.] The answers set up general denials and certain special defenses, including jurisdiction. [Tr. pp. 13-18.]

Jurisdictional Statement.

The original jurisdiction of the District Court was invoked by plaintiffs under Section 1337, Title 38, *United States Code,* and Section 216(b), Title 29, *United States Code.* [See Tr. p. 4.] Should jurisdiction in the District Court be proper, the jurisdiction of this Court on this appeal would lie under Section 1291, Title 28, *United States Code.*

Statement of Facts.

The defendant Far West is and was an engineering company doing design and consulting engineering work in the mechanical, electrical or atomic energy line. [Tr. p. 151.] There is no contest about the fact that the ten plaintiffs were employed by Far West. The individual rates of compensation and the actual hours worked by plaintiffs were established by the payroll records of Far West. [See Exs. A to J.] These varied from $4.75 to $3.50 per hour.

The nexus of the controversy concerns the present contention of the plaintiffs that certain hours beyond forty in a given work week should have been compensated at the overtime rate of time and a half rather than on a straight-time basis. [Tr. pp. 1-12.] The defendant, Far West, contended that the subject employees were

exempt, as supervisory or professional personnel, from legislative overtime provisions and that the work done was creative and design activities not in interstate commerce. [Tr. pp. 13-18.]

Specifications of Error.

1. The District Court erred in finding and awarding judgment on the basis of the fact that the subject activities involved were the production of goods in interstate commerce within the meaning of the Fair Labor Standards Act.

2. The District Court erred in failing to dismiss the complaints of plaintiffs Gindes and Linick for wilful failure to comply with the discovery rules of procedure in the court below.

3. The District Court erred in failing to persevere in its initial decision to find against the plaintiffs Morrison, Gindes, Linick, Massar, Gaiennie and Soldis because of their failure to appear at the trial and press their cases.

4. The District Court erred in failing to hold that plaintiffs, as supervisory and professional personnel, were exempted from the overtime provisions of the Fair Labor Standards Act.

ARGUMENT.

A. The Work Here Involved Is Not "Interstate Commerce" Within the Meaning of the Applicable Legislation.

It should be borne in mind that the defendant Far West is not in "interstate commerce" or the "production" of "goods" for or in interstate commerce in any normal sense of the word. The defendant Far West's activities were described without challenge as follows [Tr. p. 151]:

> "A. We are an engineering company which does prime or subcontract (14) work, prime contracts for the U. S. Government and subcontracts for the U. S. Government. As prime contractors we do work for industrial plants, consulting, designing, layouts, anything in the mechanical, electrical or atomic energy line."

The work was purely in the nature of design. [Tr. pp. 152, 248-249.] Goods, as such, were not produced, nor were tools or dies to produce the same fabricated; only design and layout work. [Tr. p. 156.] The plaintiffs' own testimony was to the effect that they did or supervised drafting and design work. [Tr. pp. 190-191, 213-214.]

Fundamentally, it may be considered that Congress did not, in the enactment of the Fair Labor Standards Act legislation exert the full measure of its commerce power but instead proposed to leave local business to the protection of the state, thus requiring the observation of the limitation that courts are not free to absorb by judicial process essentially local activities which Congress in the exercise of its judgment did not see fit expressly or by fair implication to bring within the scope of this chapter. *E. C. Schroeder Co. v. Clifton,* 153 F. 2d 385, cert. den. 328 U. S. 858. Courts should not by forced

argument extend congressional enactments beyond their reasonable confines in assertions of interstate commerce. *Jenkins v. Durkin,* 208 F. 2d 941. It was in recognition of such factors that courts have concluded that the work of engineers and architects are not in interstate commerce, nor within the "mischief" sought to be remedied by the Fair Labor Standards Act. Such "plans" and "specifications" are not "goods" in interstate commerce within the meaning of the Act, or in the statutory sense. See, *e.g., McComb v. Turpin,* 81 F. Supp. 86.

It is important to realize that application of the Fair Labor Standards Act to particular employees is not gauged by nearness to or possible implication of interstate commerce. The term "engaged in interstate commerce" as used in the Act is not one merely limited by the power of imagination. *Mateo v. Auto Rental Co.,* 240 F. 2d 831. It is the nature of the employee's work rather than the nature of the employer's business which brings him within or excludes him from the Act. *Johnston v. Cotton Producers Assn.,* 244 F. 2d 553. Thus, even where the employees work on materials *brought in from outside the state* does not mean automatic coverage under the Act. See *Selby v. J. A. Jones Const. Co.,* 175 F. 2d 143; *Collins v. Ford, Bacon & Davis, Inc.,* 71 F. Supp. 229. This principle is true even where the employer engages in interstate commerce or has offices in various states. *Mitchell v. Household Finance Corp.,* 208 F. 2d 667; *Mitchell v. Krout,* 150 F. Supp. 857. It is also true even if the employees are working on a road or a dock from which interstate commerce may be carried on and therefore would facilitate the same. *Koepfle v. Garavaglia,* 200 F. 2d 191; *Nieves v. Standard Dredging Corp.,* 152 F. 2d 719. Thus, auditors traveling across

state lines in auditing branches in various states, but carrying no saleable goods were not considered in the production goods in interstate commerce, even though mailing in reports of their activities. *Mitchell v. Kroger Co.,* 150 F. Supp. 30.

Reviewing the undisputed facts of our present case, what do we have? The performance, supervision, and direction of design engineering and drafting work—all in California and at California facilities by California engineers, generally for a contracting party situated in California. This hardly seems to be "goods" in interstate commerce within the meaning of the Act, and it is submitted that it was error to so hold.

B. The Plaintiffs Philip Gindes and James M. D. Linick, Having Invoked the Jurisdiction of the District Court, but Refusing to Submit to Discovery Under the Federal Rules of Civil Procedure, Should Have Their Actions Dismissed.

The plaintiffs Gindes and Linick filed their actions, but in spite of the most assiduous activities on the part of the defendant, were never subsequently seen through the time of trial, judgment, or appeal. After the commencement of their respective actions, defendant caused the plaintiff Gindes to be *served* with a subpoena *re* deposition [Tr. pp. 90-91] and the defendant Linick to be *served* with a subpoena *re* deposition. [Tr. pp. 117-118.] Appropriate and timely notice of the taking of these depositions was given to opposing counsel. [Tr. pp. 19-21.] Neither the plaintiff Gindes or Linick appeared at the appropriate time and place for the taking of their depositions. An aggravating feature to the situation is that counsel for these two plaintiffs in advance moved

the Court for the protection and delay of these depositions. [See letter to Court, Tr. pp. 98-99, and the oral proceedings before the Court on January 13, 1958, Tr. pp. 137-138.] The Court denied plaintiffs' motions. The defendant, upon the non-appearance of the two subject plaintiffs promptly brought on motions to dismiss under Rule 37(d) F. R. C. P. [Tr. pp. 92-102 and 118.] On January 28, 1958, the Court denied the motions to dismiss "in view of the fact that the case is set for trial on the merits on Feb. 4, 1958, . . . without prejudice to its renewal at the time of trial." [Tr. pp. 109 and 120.]

On February 4, 1958, the subject matters proceeded to trial. Neither of the plaintiffs Gindes or Linick appeared. Virtually at the conclusion of the trial, the trial Court made the following observations:

> "The Court: I will tell you something, Mr. Kraker. You (128) have elected not to call these other witnesses. That is your responsibility. But in view of the fact that there is a sharp conflict in the evidence as to what these people did, and in view of the fact that your witnesses have no personal knowledge of the amount of time that these people spent in each category, I must find for the defendant on all cases in which the plaintiffs are not here." [Tr. p. 256.]

> "As to Mr. Gindes, although he is not here, the testimony I think is clear that he was acting much more in a professional capacity than probably any of these plaintiffs." [Tr. p. 257.]

After the trial Court's rather amazing change of attitude on February 7, 1958 [Tr. pp. 259-262], the defendant Far West renewed the motions to dismiss against

plaintiffs Gindes and Linick under Rule 37(d) F. R. C. P. [Tr. pp. 109-110, 120.] These motions were summarily denied. [Tr. pp. 112 and 122.]

As pointed out earlier in this discussion, the defendant was clearly and completely prevented from any discovery whatsoever with reference to the plaintiffs Gindes and Linick. It is said, colloquially, that rules are made only to be broken. It would seem, however, that the *Federal Rules of Civil Procedure* are not simply idealistic suggestions but substantive rights in the parties litigant. Rule 37(d), *Federal Rules of Civil Procedure* provides as follows:

> "(d) *Failure of Party to Attend or Serve Answers.* If a party or an officer or managing agent of a party wilfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under Rule 33, after proper service of such interrogatories, the court on motion and notice may strike out all or any part of any pleading of that party, or dismiss the action or proceeding or any part thereof, or enter a judgment by default against that party."

May plaintiffs, who invoked the jurisdiction of the Federal court, with impunity flout the very discovery principles there established? The Federal courts have previously answered this negatively. See *Fischer v. Dover S.S. Co.,* 218 F. 2d 682; *Peitzman v. City of Illmo,* 141 F. 2d 956, cert. den. 323 U. S. 718. It is submitted that the answer ought to be the same here, in this present flagrant situation.

C. The Evidentiary Situation With Regard to the Plaintiffs Was Insufficient to Sustain a Judgment in Their Favor.

1. As to the Plaintiffs Morrison, Gindes, Linick, Massar, Gaiennie, and Soldis.

These six plaintiffs apparently did not attach sufficient importance to the trial to attend. None were present or gave testimony. At the conclusion of the evidence, the trial judge stated concerning them [Tr. p. 256]:

> "The Court: I will tell you something, Mr. Kraker. You (128) have elected not to call these other witnesses. That is your responsibility. But in view of the fact that there is a sharp conflict in the evidence as to what these people did, and in view of the fact that your witnesses have no personal knowledge of the amount of time that these people spent in each category, I must find for the defendant on all cases in which the plaintiffs are not here."

In view of the evidence adduced, it is difficult to understand why the trial judge changed his mind on the subject. What, then, was the state of the record at the conclusion of the trial as to these plaintiffs? The defendant Far West's payroll records, true enough as heretofore adverted to [Exs. A to J], were introduced, showing the hours worked during the periods in question and the substantial rate and compensation paid plaintiffs. The following is the unchallenged evidence as to each plaintiff:

a. *The Plaintiff Lynn Morrison.*

Chief engineer of the Airport office of the defendant Far West. He was in charge of all of the work at that office. "He hired and fired." [Tr. pp. 150-151;

see also Pltf. Ex. 1, p. 29.] His background, qualifications and performance had been observed before designation. [Tr. p. 162.]

b. *The Plaintiff Philip Gindes.*

A supervising engineer. He did administrative and executive work, and kept engineering records. He parceled out the work to the other men, and had the right to hire and fire the men under him. [Tr. p. 145; Pltf. Ex. 1, p. 42.] Various references to his activities appeared in the trial transcript. Probably the trial court's summary concerning him, at the conclusion of the evidence, is illuminating [Tr. p. 257]:

> "As to Mr. Gindes, although he is not here, the testimony I think is clear that he was acting much more in a professional capacity than probably any of these plaintiffs."

c. *The Plaintiff James M. D. Linick.*

A graduate engineer. Selected as a professional engineering supervisor and put in charge of a group of men at the Pico plant. [Tr. p. 147.]

d. *The Plaintiff George D. Massar.*

Experienced in schematics and wiring diagrams. For a short period of time of his employment, worked as a leadman for a small group of draftsmen. [Tr. p. 155; Pltf. Ex. 1, p. 46.] A "leadman" parceled the work out to draftsmen for execution; checking it on its return. [Tr. p. 205.] Massar read engineering drawings and had several draftsmen under his supervision. [Tr. p. 146.]

e. *The Plaintiff Warren L. Gaiennie.*

Laison engineer between the defendant Far West and Hughes Aircraft. His duties included picking up the work at Hughes, obtaining the technical explanations as to what was to be done, conveying work to Far West, and returning the completed jobs to Hughes. [Tr. p. 150; Pltf. Ex. 1, p. 29.]

f. *The Plaintiff Joseph P. Soldis.*

During the three-week period in question, he supervised the electrical section of the Far West engineering department. His work during the period in question was to distribute the work to the leadmen, keep track of the time spent, and advise and oversee the work to see that it was done properly. [Tr. pp. 148-149.]

The foregoing recitals are not the bare contentions of the defendant Far West. There was no evidentiary conflict as to the professional, engineering, and high-pay status of each plaintiff's position. Yet, with nothing more in the record and after the close of the case, the trial court reconvened the proceedings, stated it had been in contact with the Department of Labor, and subsequently signed findings proposed by plaintiffs. [See Tr. pp. 259-260.] Findings were made as to each plaintiff substantially as follows:

> "That plaintiff, having been an hourly employee, the exemptions under Section 13(2)(1) of the Act, or any other provisions thereof, do not apply." [Tr. p. 50. Each plaintiff's case has a similar finding.]

It is probably fair to characterize this finding, particularly in view of the evidentiary posture, as a rather sweeping generalization without support in the law passed by Congress.

2. As to the Plaintiffs Ingildsen, Pyle, Craig, and Clement.

These plaintiffs actually appeared at the trial. Nevertheless, surprisingly little conflict developed in the evidence about the fact of these plaintiffs being skilled, highly paid, supervisory and professional personnel. Here is the evidence:

a. *The Plaintiff Sven Ingildsen.*

Engineer in charge of the Pico office of Far West (except for about two months when he was doing checking work at the Airport office) for about two and a half years. He hired and fired employees, and asked for pay increases for them. [Tr. pp. 144-145.]

Plaintiff Ingildsen, in his testimony, made some effort to minimize his position at Far West, but admitted that he was a graduate engineer and had been a room boss for Far West [Tr. p. 204], and that as such he was in charge of the entire drafting room, and distributed the work which came in "to the different designers, draftsmen, and so forth." Although initially stating that he had little discretion as to hiring and firing personnel, he finally conceded that he did have considerable discretion. [Tr. pp. 213-214; *cf.*, Ex. K.]

The Court said of plaintiff Ingildsen in its trial end summary [Tr. p. 257]:

> "With reference to Mr. Sven Ingildsen, I have come to (129) the conclusion that certainly as to the nine months in which he was acting as room boss he is not entitled to recover. As to the two months in which he was performing the same type and character of work which other men did, and in which he testified he was

doing checking work and also some work of the same type and character as the people under him, I am going to allow him to recover for those two months. As to all the previous time, if it is not barred by the statute of limitations, I will take a look at that."

b. *The Plaintiff Frederick J. Pyle.*
Graduated as an engineer. Was put in charge of a group of electrical designers and draftsmen at Far West. [Tr. pp. 146-147.] Plaintiff Pyle, in his testimony, stated that he had graduated with a B.S. degree in engineering [Tr. p. 199] and while with Far West was a senior engineer or senior designer who would make a layout and ask other draftsmen to do the detail work. [Tr. p. 191.]

c. *The Plaintiff Albert S. Craig.*
Plaintiff Craig testified that he was a graduate engineer. [Tr. pp. 169-170.] He engineered and designed air test equipment at Far West for Hughes Aircraft [Tr. p. 142], and was paid $3.75 per hour.

d. *The Plaintiff Carl L. Clement.*
Chief project engineer on the Hughes design project. [Tr. p. 143.] He was a graduate engineer, and would obtain the Hughes work and hand it over to the leadmen for performance. [Tr. p. 219.] Plaintiff Clement was somewhat self-effacing about his capacity to the point that the Court remarked, "That is all. I am not impressed with this claim." [Tr. p. 221.]

The Court characterizes plaintiff Clement's testimony at the trial's end as follows [Tr. p. 257]:

"As far as Mr. Clement is concerned, I don't think the work which he performed, particularly

> in view of his frank statements as to the type of work he did would appeal to any court. It certainly doesn't appeal to me, and I am going to deny him recovery."

It is simply appalling to assert that the evidence as set forth recommends itself to any Court as an example of worker exploitation. These were the professional men and supervisors at Far West. No deception as to inflated title-designations is apparent from the testimony. But, in addition look at the distribution averages at Far West in various positions, as requested by plaintiffs during certain years. [See Pltf. Ex. 1, pp. 9-10.] The staff appears in adequate proportions to the type of technical work being done. It is respectfully submitted that the evidence gives no justification for recovery by these plaintiffs.

D. Plaintiffs Were Exempted From the Overtime Provisions of the Applicable Legislation by Reason of Their Status as Supervisory or Professional Employees.

Section 213(a)(1) of the *United States Code* exempts from the wage and hour provisions of the Act "any employee employed in a bona fide executive, administrative, professional, or local retailing capacity, or in the capacity of outside salesman (as such terms are defined by the Administrator)."

Section 541.1 of the regulations issued by the Administrator defined the term "bona fide executive" as follows:

> "The term 'employee employed in a bona fide executive * * * capacity' in section 13(a)(1) of the act shall mean any employee—

(a) whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; *and*

(b) who customarily and regularly directs the work of two or more other employees therein; *and*

(c) who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; *and*

(d) who customarily and regularly exercises discretionary powers; *and*

(e) who does not devote more than 20 percent of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in paragraphs (a) through (d) of this section: *Provided,* That this paragraph (e) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20-percent interest in the enterprise in which he is employed; *and*

(f) who is compensated for his services on a salary basis at a rate of not less than $55 per week (or $30 per week if employed in Puerto Rico or the Virgin Islands) exclusive of board, lodging, or other facilities:

Provided, That an employee who is compensated on a salary basis at a rate of not less than $100 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or sub-

division thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section."

Section 541.3 of the regulations issued by the Administrator defined the term "bona fide * * * professional" as follows:

"The term 'employee employed in a bona fide * * * professional * * * capacity' in section 13(a)(1) of the act shall mean any employee—

(a) whose primary duty consists of the performance of work—

(1) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, *or*

(2) original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the employee; *and*

(b) whose work requires the constant exercise of discretion and judgment in its performance; *and*

(c) whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; *and*

(d) who does not devote more than 20 percent of his hours worked in the workweek to activities which are not an essential part of and necessarily incident to the work described in paragraphs (a) through (c) of this section; *and*

(e) who is compensated for his services on a salary or fee basis at a rate of not less than $75 per week (or $200 per month if employed in Puerto Rico or the Virgin Islands) exclusive of board, lodging, or other facilities: *Provided,* That this paragraph (e) shall not apply in the case of an employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and who is actually engaged in the practice thereof:

Provided, That an employee who is compensated on a salary or fee basis at a rate of not less than $100 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the performance of work *either* requiring knowledge of an advanced type in a field of science or learning, which includes work requiring the consistent exercise of discretion and judgment, *or* requiring invention, imagination, or talent in a recognized field of artistic endeavor, shall be deemed to meet all of the requirements of this section."

It will be observed that the various plaintiffs fit clearly within the purview of one or the other of the regulations quoted. It might be argued that the plaintiffs were not in the exempt category because they were paid on an hourly basis. [The reason for this, the defendant Far West pointed out, was because its contracts were on an hourly rate basis. Tr. p. 143.] However, the defendant Far West's testimony was to the effect that a guarantee

was given to the individual professional and/or supervisory personnel. [Tr. p. 159.] The four testifying plaintiffs' testimony was not entirely in accord with this, but it is probably fair to assume that there was a guarantee. See plaintiff Pyle's testimony at page 195 of the Transcript.

It should be borne in mind, also, that even in the face of the most extended application of the Administrator's regulations, the interpretative decisions, bulletins, and releases of the Administrator undr the Fair Labor Standards Act are to be accorded respect and consideration as informed opinions. However, they "do not constitute an interpretation of the Act or a standard for judging factual situations which binds a district court's processes, as an authoritative pronouncement of a higher court might do." *Skidmore v. Swift & Co.,* 323 U. S. 134, 139. The intent of Congress should clearly govern.

What was the intent of Congress? Fortunately, Congress in the enactment of the subject legislation, made a declaration of intent. Section 202 of the *United States Code* provides:

> "(a) The Congress finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of worker (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow

of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is declared to be the policy of this chapter, through the exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct, and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power."

Actually, the defendant Far West's testimony was to the effect that there was a conference and a guarantee arrangement given to the supervisory and professional personnel placed on a straight-time basis. [Tr. p. 159.] Plaintiffs appear to deny this, but the plaintiff Pyle's testimony places some equivocation if not denial of this [Tr. p. 195]:

"The Court: What happened then? Were you told that you could work overtime if you waived the overtime rate? A. Yes. And they said that I would be working more hours than 45. Now I couldn't honestly say they did or did not guarantee me any specific number of hours."

The plaintiffs' thesis or apologia may be contained in the rather cynical testimony of plaintiff Craig, who stated [Tr. p. 177]:

"A. Yes. I was told that I would receive $3.75 an hour. At first I was under the impression that things were supposedly picking up. They were working a 45-hour week at the time, and I was paid time and a half over the 40 hours for the first three weeks. Then I discovered there were men working 60 hours a week and also getting overtime. Well, I began being a little (43) interested. I figured when

> I was there already, why shouldn't I work 60 hours, too, and make that much more money. It would have amounted to about $260, which is not exactly a low salary."

And on page 179 of the Transcript:

> "The Court: Compensation at the rate of $3.75 an hour usually implies some type of skill other than that of an ordinary laborer, doesn't it? A. Not in job shops, sir. If you go out for a job under—well, I hate to use the word 'arrangement,' but in an average company that may be considered high. My rate today is $800 a month. I mean that is my salary. The only time you can make money in a job shop is in overtime, when they pay you time and a half. When they don't it is foolish to work for them, because (45) you can go out and make the same salary elsewhere. That is exactly what I did.
>
> The Court: You work for $800 a month now? A. Yes."

Does the cause here involved recommend itself as one which Congress sought and intended to correct when the Fair Labor Standards Act was enacted? Are these plaintiffs the downtrodden, exploited workmen within the "mischief" Congress sought to correct? Their own testimony nullifies this. Their attitude, even at this late date, in pressing for penalties under the Act against their former employer indicates either animus or a desire to achieve the maximum speculative recovery. It is submitted that an approach such as this destroys and desecrates the benign purpose which Congress had in mind in passing the subject legislation, and which this Court should not permit under the guise of the wooden application of administrative interpretation.

Conclusion.

It is respectfully submitted that the Judgment of the District Court is erroneous and should be reversed with instructions, on the grounds heretofore set forth.

Respectfully submitted,

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